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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,666	07/12/2001	Edward Anthony Bezek	CFLAY.00046	6182
22858	7590	11/05/2003	EXAMINER	
CARSTENS YEE & CAHOON, LLP			NORDMEYER, PATRICIA L	
P O BOX 802334			ART UNIT	
DALLAS, TX 75380			PAPER NUMBER	

1772

DATE MAILED: 11/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application N .

09/904,666

Applicant(s)

BEZEK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 3, 2003 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 3 and 5 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettel, III (USPN 5,320,889) in view of Jones et al. (USPN 6,063,414).

Bettel, III discloses a container for food products (Column 1, lines 6 – 11) formed with a liner, the inner most layer that is contact with the product, made from ethyl vinyl alcohol (Column 2, lines 45 – 49 and Figure 2, #, #42). Attached to the ethylene vinyl alcohol layer is a layer of high-density polyethylene (Column 2, lines 50 – 52, Column 3, lines 38 – 39 and Figure 2, #30). An adhesive layer is interposed between the two layers in order to adhere the layers of

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material together in the container (Column 3, lines 47 – 51 and Figure 2, #40). The liner has a thickness between 0.5 and 2 mils (Column 3, lines 58 – 60). As seen in Figure 1, the container contains a lid to seal the container from the outside environment. However, Bettel, III fails to disclose the dry food product acting as a desiccant to draw moisture away from the ethylene vinyl alcohol layer and the dry food product comprising a water activity of less than 0.6 or 0.4 upon the sealing step.

Jones et al. teaches dry pet food with a water activity 0.7 or less (Column 11, lines 16 – 17) that acts as a desiccant since water binds to the soluble fiber material (Column 5, lines 3 – 6) in a polymer (Column 11, lines 7 – 9) container of gas impermeable materials (Column 5, lines 1 – 2) for the purpose of packaging food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a dry food product with a water activity 0.7 or less to act as a desiccant in a container in Bettel, III in order to package food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product as taught by Jones et al.

Bettel, III discloses the claimed invention except for the thickness of the ethylene vinyl alcohol layer being approximately 0.1 mils thick. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide an ethylene alcohol

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layer with a thickness of approximately 0.1 mils since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980). Bettle, III discloses that it is known to make the bottle as thin as possible in order to use a smaller amount of material in the bottle to reduce the cost of the finished product.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,693,283 to Fehn is cited to show the state of the art in plastic containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
pln


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

10/31/03